

ORIGINAL

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FILED
DISTRICT COURT OF GUAM

AUG - 7 2007
JEANNE G. QUINATA

CLERK OF COURT

7 **IN THE UNITED STATES DISTRICT COURT**
8 **FOR THE DISTRICT OF GUAM**

10 MARESA L. ANDERSON,) CIVIL CASE NO. 07-00003
11)
12 Plaintiff,)
13 vs.)
14 UNITED STATES OF AMERICA,)
15 Defendant.)

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**ANSWER OF THE UNITED STATES
TO THE FIRST AMENDED
COMPLAINT**

17 THE UNITED STATES, Defendant herein, submits its answer to the First Amended
Complaint as follows:

18 1. ADMITS.

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20 2. ADMITS.

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22 3. Defendant is without sufficient knowledge to admit or deny the allegations contained
in Paragraph III and therefore DENIES same.

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24 4. ADMITS that Captain Kirin L. Madden is a member of the United States Air Force
and acting within the scope of her office and employment.

5. ADMITS.

6. Defendant is without sufficient knowledge to admit or deny the allegations in

paragraph VI.

7. Defendant is without sufficient knowledge to admit or deny the allegations in

paragraph VII (erroneously captioned as paragraph VIII in the First Amended Complaint).

8. Paragraph VIII contains conclusions of law to which no answer if required. To the

extent an answer is deemed necessary, defendant Denies the allegations contained in this

paragraph.

9. Paragraph IX contains conclusions of law to which no answer if required. To the

extent an answer is deemed necessary, defendant DENIES the allegations contained in this

paragraph.

FIRST AFFIRMATIVE DEFENSE

The United States DENIES any of its agents or employees were negligent and/or breached any standard of care due the Plaintiff and/or engaged in any conduct which was the proximate cause of the injuries, damages and losses allegedly incurred by Plaintiff.

SECOND AFFIRMATIVE DEFENSE

Pursuant to 28 U.S.C. § 2674, Plaintiff is proscribed from recovering any amount for prejudgment interest against the United States of America.

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1 THIRD AFFIRMATIVE DEFENSE

2 Under 28 U.S.C. § 2412(D)(1)(a), Plaintiff cannot recover attorney's fees from the United
3 States of America.

4 FOURTH AFFIRMATIVE DEFENSE

5 Plaintiffs claim is diminished or completely barred by Guam law regarding
6 comparative/contributory negligence.

7 FIFTH AFFIRMATIVE DEFENSE

8 Plaintiff voluntarily assumed the risk of injury.

9 SIXTH AFFIRMATIVE DEFENSE

10 Pursuant to 28 U.S.C. § 2402, Plaintiff is not entitled to a jury trial.

11 SEVENTH AFFIRMATIVE DEFENSE

12 All future damages, if any, must be reduced to present value.

13 EIGHTH AFFIRMATIVE DEFENSE

14 The United States has not waived its sovereignty under the Federal Tort
15 Claims Act (FTCA), 28 U.S.C. § 1346(b) to include a jury trial.

16 NINTH AFFIRMATIVE DEFENSE

17 Defendant reserves the right to amend its Answer with additional defenses of which it
18 may become aware as discovery progresses and to raise any other matter constituting an
19 avoidance or affirmative defense.

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1 WHEREFORE, having fully answered all counts of the Complaint, Defendant prays that
2 Plaintiff takes nothing by way of her Complaint against it, that the same be dismissed, and that
3 judgment be awarded in favor of Defendant, together with costs and such other and further relief
4 as the Court deems appropriate in this case.

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6 RESPECTFULLY SUBMITTED this 7th day of August 2007.

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BY:

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